IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1367 of 1989
To
FIRST APPEAL No. 1370 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
RAMESHBHAI RAYCHANDBHAI NAYAR & 3 - Defendant(s)

==========

Appearance :
MR SANDIP C SHAH for Appellant(s) : 1,
Ms ARCHANA ACHARYA for Respondent(s) : 1 - 2.
None for Respondent(s) : 3 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 08/08/2007

ORAL JUDGMENT

Shri Sandip C.Shah, learned counsel for the appellant; Ms. Archna Acharya, learned counsel

for the respondents no. 1 and 2 in each of the appeal. None for the other respondents though served.

2. The Insurance Company, being aggrieved by the award dated 29th November, 1988, passed by the MAC Tribunal [Aux.] Surendranagar in MAC Petitions No. 222/85, 230/85, 232/85 and 233/85 has filed First Appeals No. 1367/89, 1368/89, 1369/89 and 1370/89. Shri Sandip Shah, learned counsel for the appellant submitted that within the scope of Section 96 [2] of the Motor Vehicles Act, the Insurance Company is raising defence that if a passenger is allowed in the goods vehicle, then, the Insurance Company cannot be held liable even if it is found that such passenger was travelling for hire or reward or as owner of the goods. Placing reliance upon the judgment of the Supreme Court in the matter of New India Assurance Co. v. Vedwati & Ors. [AIR 2007 Supreme Court 1334], he submitted that the Insurance Company deserves to be exonerated.

3. Ms. Archna Acharya, learned counsel for the respondents–owner and driver, however,

submitted that the Tribunal did not commit any wrong. The original claimants, though are served but are not present in the Court.

4. In the matter of New India Assurance Co. v. Vedwati [supra], the Supreme Court has observed that the provisions of the old Act or the New Act would not make any difference and the moment it is held that some person was travelling as passenger in goods vehicle, then, the Insurance Company would not be answerable to the claim made by the claimants/dependents of such deceased passenger. In view of the said authoritative pronouncement by the Supreme Court, I allow all the appeals and hold that the Insurance Company would not be liable to pay anything to the claimants.

5. If the Insurance Company has made payment of the amount to the claimants, then, the Insurance Company would be entitled to recover the same from the owner and the driver of the truck and would also be entitled to interest at the rate of 6% per annum on the amount deposited by them for payment to the claimants from the date they

deposited the amount. All the appeals are allowed No costs.

[R.S. GARG, J.]

pirzada/-